

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PLASMA PHYSICS CORPORATION,

Plaintiff,

v.

HITACHI, LTD., HITACHI AMERICA, LTD.,
and HITACHI SEMICONDUCTOR (AMERICA) INC.,

Defendants.

Civil Action
No. _____

**JURY TRIAL
DEMANDED**

COMPLAINT

This complaint is filed to effectuate Judge Wexler's July 24, 2000 oral ruling with respect to Hitachi, Ltd., Hitachi America, Ltd., and Hitachi Semiconductor (America) Inc., and Civil Action No. CV-99-8593. In accordance with Judge Wexler's ruling, the filing date of this complaint relates back to the December 28, 1999 filing date for Civil Action No. CV-99-8593 for all substantive issues in the original complaints, including damages pursuant to 35 U.S.C. § 286. Therefore, plaintiff, Plasma Physics Corporation ("Plasma Physics"), for its complaint against defendants, Hitachi, Ltd., Hitachi America, Ltd., and Hitachi Semiconductor (America) Inc., alleges as follows:

JURISDICTION

1. This is an action for patent infringement under the laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on Sections 1338(a), 1391(b), 1391(c), 1391(d), and/or 1400(b) of Title 28, United States Code.

①

PARTIES

2. Plaintiff Plasma Physics is a New York corporation with its principal place of business at 40 Overlook Road, Locust Valley, New York 11560, within this judicial district.

3. Upon information and belief, defendant Hitachi, Ltd. is a Japanese corporation having a place of business at 6, Kanda-Surugadai 4-chome, Chiyoda-Ku, Tokyo, 101-8010, Japan. Upon information and belief, in connection with the acts of infringement complained of herein, Hitachi, Ltd. has and is (a) transacting business within New York, (b) contracting to supply goods or services in New York, (c) committing tortious acts within New York, and/or (d) committing tortious acts without New York causing injury to persons and property within New York, and (i) regularly does or solicits business, or derives substantial revenue from goods used or consumed or services rendered, in New York or (ii) expects or should reasonably expect its tortious acts to have consequences in New York and derives substantial revenue from interstate or international commerce. In addition, upon information and belief, Hitachi, Ltd. has and is, in connection with the acts of infringement complained of herein, purposely directing into the stream of commerce semiconductor components included in Hitachi electronic products or to be included in electronic products made by others with the expectation that such electronic products will be purchased and used in New York.

4. Upon information and belief, defendant Hitachi America, Ltd., a wholly owned subsidiary of Hitachi, Ltd., is a New York corporation having a place of

business at 50 Prospect Avenue, Tarrytown, New York 10591 and is doing business in New York.

5. Upon information and belief, defendant Hitachi Semiconductor (America) Inc., is a wholly owned subsidiary of Hitachi Ltd., is a Delaware corporation with a place of business at 21 Old Main Street, Fishkill, New York 12524-1848, is registered to do business and is doing business in New York, and has a registered agent for service of process in New York.

THE PATENTS IN SUIT

6. United States Patent 4,226,897 (the “‘897 patent”), entitled “Method of Forming Semiconducting Materials and Barriers,” duly and legally issued to Plasma Physics on October 7, 1980, based on an application filed on December 5, 1977 by John H. Coleman. Plasma Physics is the owner of title to the ‘897 patent and has the right to recover for past infringement thereof with respect to the following subject matter areas: apparatus for performing plasma chemical vapor coating or plasma chemical vapor etching of disc-shaped wafers made of single crystal silicon, polycrystal silicon, single crystal III-V compounds or polycrystal III-V compounds; disc-shaped wafers made with such apparatus by plasma chemical vapor coating or plasma chemical vapor etching; and processes in combination with such apparatus (the “Excluded Subject Matter”).

7. United States Patent 5,470,784 (the “‘784 patent”), entitled “Method of Forming Semiconducting Materials and Barriers Using A Multiple Chamber Arrangement,” duly and legally issued to Plasma Physics on November 28, 1995, based on an application filed on September 23, 1992 by John H. Coleman. Plasma Physics is the

owner of title to the '784 patent and has the right to recover for past infringement thereof in the areas of the Excluded Subject Matter.

CLAIMS FOR PATENT INFRINGEMENT

8. Upon information and belief, defendants Hitachi, Ltd., Hitachi America, Ltd. and Hitachi Semiconductor (America) Inc., have infringed one or more claims of the '897 and '784 patents, and are continuing to infringe one or more claims of the '784 patent, in violation of 35 U.S.C. §§ 271 (a), (b) and/or (g) by making, using, offering to sell, selling and/or importing into the United States semiconductor wafer products made by processes claimed in one or more claims of the '897 and '784 patents and/or by actively inducing infringement of one or more claims of the '897 and '784 patents.

9. Notice of infringement has been given to Hitachi, Ltd, and thereby also to its wholly owned subsidiaries Hitachi America, Ltd. and Hitachi Semiconductor (America) Inc.

10. Upon information and belief, Hitachi, Ltd.'s, Hitachi America, Ltd.'s, and Hitachi Semiconductor (America) Inc.'s infringement has been willful and deliberate.

WHEREFORE, plaintiff Plasma Physics Corporation prays for judgment and relief against defendants, including:

A. Adjudging each of the '897 and '784 patents to be not invalid and to be enforceable;

B. Adjudging that each of the defendants has infringed and induced infringement of said patents;

C. Permanently enjoining Hitachi, Ltd., Hitachi America, Ltd., and Hitachi Semiconductor (America) Inc., and their officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '784 patent;

D. Adjudging that an accounting be had for damages caused by the defendants' infringement, together with pre-judgment and post-judgment interest;

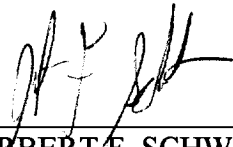
E. Adjudging that defendants are willful infringers and trebling the aforesaid damages pursuant to 35 U.S.C. § 284;

F. Adjudging that this case is an exceptional case and awarding Plasma Physics Corporation its costs, expenses and reasonable attorney's fees pursuant to 35 U.S.C. § 285; and

G. Such other and further relief as this Court may deem just and proper.

Trial by Jury is hereby demanded.

Dated: August 4, 2000



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Attorneys for Plaintiff,
Plasma Physics Corporation

JS 44
(Rev. 12/96)

CIVIL COVER SHEET

4553

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PLASMA PHYSICS CORPORATION

DEFENDANTS

HITACHI, LTD.
HITACHI AMERICA, LTD.
HITACHI SEMICONDUCTOR (AMERICA)

WEXLER, J.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Nassau
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SEE ATTACHED
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED: WALL, M

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Fish & Neave
1251 Avenue of the Americas
New York, NY 10020
(212) 596-9000

ATTORNEYS (IF KNOWN)
Latham & Watkins
885 Third Avenue
New York, NY 10022
(212) 906-1244

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY) pursuant to Court Order

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance		<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine		<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act		<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument		<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment		<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act		<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)		<input type="checkbox"/> 350 Motor Vehicle		<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits		<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits		<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 495 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract						<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability						<input type="checkbox"/> 892 Economic Stabilization Act
						<input type="checkbox"/> 893 Environmental Matters
						<input type="checkbox"/> 894 Energy Allocation Act
						<input type="checkbox"/> 895 Freedom of Information Act
						<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
						<input type="checkbox"/> 950 Constitutionality of State Statutes
						<input type="checkbox"/> 890 Other Statutory Actions

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	
<input type="checkbox"/> 290 All Other Real Property		

LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

HABEAS CORPUS:
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL UNLESS DIVERSITY.)

This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, and more particularly under Sections 271, 281, 284 and 285 of that Title.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Wexler

99-8593,
DOCKET NUMBER 00-2199, 00-3146

DATE

August 9, 2000

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ARBITRATION CERTIFICATION

I, Herbert F. Schwartz, counsel for Plasma Physics Corporation
do hereby certify pursuant to the Local Civil Rule 83.10, at (d) (3), that to the best
of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of
\$150,000 exclusive of interest and costs.

Injunctive Relief other than monetary damages is sought.

DISCLOSURE OF INTERESTED PARTIES - LOCAL CIVIL RULE 1.9

Identify any corporate parents, subsidiaries or affiliates of named corporate parties:

See separate statement

Did the cause arise in Nassau or Suffolk County? Yes

If you answered yes, please indicate which county. Nassau

County of residence of plaintiff(s) (1) Nassau
(2) _____
(3) _____

County of residence of defendant(s) (1) SEE ATTACHED
(2) _____
(3) _____

I am currently admitted in the Eastern District of New York and currently a member in good
standing of the bar of this court.

Yes X No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain) No X

Please provide your E-MAIL Address and bar code below. Your bar code consist of the initials of your
first and last name and the last four digits of your social security number or any other four digit number
registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the local civil rules) ATTORNEY
BAR CODE HS2599

E-MAIL ADDRESS HSCHWARTZ@FISHNEAVE.COM

Defendant	County of Residence
Hitachi, Ltd.	6, Kanda-Surugadai 4-chome Chiyoda-Ku, Tokyo, 101-8010 JAPAN
Hitachi America, Ltd.	50 Prospect Avenue Tarrytown, NY 10591 (Westchester County)
Hitachi Semiconductor (America) Inc.	21 Old Main Street Fishkill, NY 12207-2543 (Dutchess County)